

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S. TRUST COMPANY, N.A.,

Plaintiff,

v.

ROBERT S. STOLAR,

Defendant.

Civil Action No. 07-CV-7357 (WHP)

**REPLY TO COUNTERCLAIM**

Plaintiff U.S. Trust Company, N.A. (“U.S. Trust”), by their attorneys Gibbons P.C., for their Reply to Defendant Robert S. Stolar’s Counterclaim, dated October 26, 2007 (the “Counterclaim”), states as follows:

**Reply to Counterclaim**

1. The allegations contained in Paragraph 1 of the Counterclaim simply refer to the parties’ “Employment Agreement Regarding Confidentiality and Non-Solicitation.” The referenced document speaks for itself and, accordingly, no response is required on behalf of U.S. Trust. To the extent a response is required, U.S. Trust denies any remaining allegations contained therein.

2. The allegations contained in Paragraph 2 of the Counterclaim constitute legal conclusion to which no response is required on behalf of U.S. Trust. To the extent a response is required, U.S. Trust denies the allegations contained in Paragraph 2 of the Counterclaim.

3. The allegations contained in Paragraph 3 of the Counterclaim constitute legal conclusion to which no response is required on behalf of U.S. Trust. To the extent a

response is required, U.S. Trust denies the allegations contained in Paragraph 3 of the Counterclaim.

**Affirmative Defenses to Defendant's Counterclaim**

**First Defense**

The Counterclaim fails to state a cause of action upon which relief can be granted.

**Second Defense**

Defendant's Counterclaim is governed by the arbitration agreement between the parties and should be submitted to the arbitral panel for resolution, in accordance therewith.

**Third Defense**

U.S. Trust is entitled to its attorneys' fees as the prevailing party in connection with its application for expedited discovery under Paragraph 5 of the Employment Agreement Regarding Confidentiality and Non-Solicitation.

**Fourth Defense**

The damages, if any, alleged to have been sustained by defendant were caused, in whole or in part, by the culpable conduct of Defendant.

**Fifth Defense**

Defendant's Counterclaim is barred, in whole or in part, by the doctrine of laches.

**Sixth Defense**

Defendant's Counterclaim is barred, in whole or in part, by the doctrine of estoppel.

Dated: New York, New York  
November 14, 2007

**GIBBONS P.C.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November, 2007, the foregoing REPLY TO COUNTERCLAIM was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

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*Attorneys for Defendant*

/s/ Mark W. Stoutenburg